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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 319/2014

JINDAL STAINLESS STEELWAY LTD Petitioner

Through : Mr. Vivek Gupta, Adv.

versus

SHANTI INDUSTRIES Respondent

Through : Mr. Abdul Azeem Kalebudde, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% 20.07.2016

Crl. M.A. No. 8975/2016 (for condonation of delay)

Petitioner filed a complaint under Sections 138/142 of the Negotiable Instruments Act, 1881 ('the Act', for short) against the respondent in respect of a dishonoured cheque before the Metropolitan Magistrate, Delhi. Vide order dated 5th June, 2013 complaint was dismissed in default for non-appearance as well as non-prosecution and respondent was acquitted. Petitioner filed a revision petition before the District Judge, which was also dismissed vide order dated 1st October, 2013. Since complaint was dismissed in default for non-prosecution and respondent was acquitted, revision petition was not maintainable. The appropriate remedy available to

the petitioner was to file a petition under Section 378(4) of the Code of Criminal Procedure, 1973 (Cr.P.C.). Thus, the order passed in the revision petition is *non est*.

After dismissal of the revision petition, petitioner preferred a Crl. M.C. No. 41/2014 on 7th December, 2013. Vide order dated 6th May, 2014 petition was treated as 'criminal leave petition' and Registry was directed to register the petition as 'criminal leave petition'. Petitioner was afforded opportunity to file the application for condonation of delay. Pursuant to this order, present application has been filed. It appears that petitioner continued to pursue the wrong legal remedy on incorrect legal advice. The period during which petitioner pursued the wrong remedy is excluded.

Keeping in mind the period during which petitioner had been pursuing the wrong remedy, delay in filing the revision petition is condoned.

Application is disposed of in the above terms.

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Leave to appeal granted. Registry to register the petition as an appeal.

Crl. A. No. 667/2016 (To be numbered)

Since short point is involved, arguments heard and the material placed on record, perused. Order of the learned Metropolitan Magistrate dated 5th

June, 2013, impugned in this appeal, is as under:-

“Present: None for the complainant.

Previous cost not deposited despite last and final opportunity and hence summons not issued. Today also despite several calls, the complainant is absent. Even his counsel has not appeared on behalf of the him. No reason for their absence is forthcoming.

In view of the facts and circumstances and discussion above, I am satisfied that the complainant is not interested in prosecuting his own case. Therefore, the present complaint is dismissed in default for non appearance as well as non prosecution. Accused is acquitted.

Bail bond, if any, stands cancelled and surety, if any, is discharged. File be consigned to record room after due compliance.”

Learned trial court has dismissed the complaint on two grounds; one ground is “non appearance of the appellant” and other is “non prosecution”. Trial court has noted that previous cost was not deposited despite last opportunity hence, summons were not issued, consequently has formed an opinion that appellant had not been prosecuting the case properly. Appellant has placed on record the photocopy of the receipt dated 18th April, 2013

issued by Delhi State Legal Aid Services Authority, which shows that cost was deposited. Process fee was also filed on 18th April, 2013 which is evident from the photocopy of the process fee form. Accordingly, in my view, trial court has erred in putting on record that previous cost had not been deposited despite last and final opportunity, hence, summons not issued. Cost was deposited and receipt was annexed along with the process fee for issuance of the summons, returnable for 5th June, 2013, therefore, it cannot be said that matter was not prosecuted diligently.

As regards non-appearance of the appellant on 5th June, 2013, it is submitted that appellant's counsel was unwell, therefore, could not appear. The Authorised Representative of the appellant reached in Court late due to traffic jam and by that time matter was over. It is submitted that appellant had been pursuing the matter diligently, inasmuch as arguments were advanced on 15th March, 2013 and thereafter, learned Metropolitan Magistrate had passed the order for summoning of the respondent for 18th April, 2013. Since steps were not taken, vide order dated 18th April, 2013 cost of ₹500/- was imposed, which was deposited, inasmuch as steps were taken for issuance of the summons for 5th June, 2013. In my view, non appearance of the counsel and the appellant when the matter was taken up

has been explained. Appellant had nothing to gain from his non-appearance and dismissal of the complaint as it was detrimental to its interest.

For the foregoing reasons, impugned order dated 5th June, 2013 is set aside and complaint is restored at its original number, subject to, however, costs of ₹25,000/- to be paid to the respondent.

Parties shall appear before the concerned Metropolitan Magistrate on 14th September, 2016.

Appeal is disposed of in the above terms.



A.K. PATHAK, J.

JULY 20, 2016
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